

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUSTIN ERIN CRITCHELL,

Defendant.

NO. CR20-0086-RAJ

ORDER CONTINUING
TRIAL DATE

Trial in this matter is currently scheduled for February 8, 2021. Dkt. Nos. 92 and 97. On December 30, 2020, Chief Judge Martinez issued General Order 18-20 in response to the continuing outbreak of Coronavirus Disease (COVID-19) in this District. The General Order noted that the significant increase in the daily number of positive cases, hospitalizations, and deaths “has foreclosed the possibility of further increasing the number and type of in-court proceedings” and explained further as follows:

A statewide vaccination effort has begun, with the first doses going to “Phase 1A” groups, which include frontline health workers and long-term care residents and staff. The distribution of the vaccine to other members of the general public is anticipated to proceed in phases through the coming months. At this time, it appears likely that the majority of individuals with business in the Courthouses, including potential jurors, will not be fully vaccinated before March 31, 2021. Limiting the size and frequency of gatherings remain critical to preventing serious injury and death from COVID-19.

1 Accordingly, General Order 18-20 continued all “criminal in-person hearings and
2 trials...scheduled to occur before March 31, 2021...pending a future general order from this
3 Court or the order of an individual judge consistent with the procedures set forth in General
4 Order 15-20.”

5 On January 5, 2021, Washington Governor Jay Inslee issued a new set of restrictions
6 that replaced the prior COVID-related restrictions in Washington that were in effect between
7 early November 2020 and January 11, 2021. Governor Inslee’s “Healthy Washington –
8 Roadmap to Recovery” is a two-phased recovery plan that took effect on January 11, 2021
9 and divided the state into eight geographic regions. Health metrics determine whether each
10 region must remain in Phase 1 with strict limitations in place similar to the restrictions
11 imposed in November 2020, or whether the region may progress to Phase 2 with slightly less
12 restrictive regulations. Even in Phase 2, masks and physical distancing are required
13 statewide for all activities.¹ At the current time, none of the eight regions in the state have
14 achieved the health metrics required to move from Phase 1 to Phase 2. Thus, indoor social
15 gatherings remain prohibited statewide.²

16 On January 19, 2021, the Washington State Department of Health (DOH) announced
17 that as of January 16, 2021, 42.3% of the total doses of vaccine that have been delivered to
18 Washington State had been administered (a total of 294,386 doses). DOH also announced
19 that effective immediately it was expanding access to the COVID-19 vaccine to all people
20 over the age of 65. Currently all individuals in categories 1A1 and 1A2 (healthcare workers,
21 first responders, and long-term care facility residents) and 1B1(all people >70 and all people
22 >50 in multigenerational households) are eligible to receive the vaccine. According to
23 DOH’s announcement, the State hopes to make vaccines available to individuals in
24 categories 1B2, 1B3, and 1B4 in late winter or early spring. Information on who is available
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26 ¹ <https://medium.com/wagovernor/inslee-announces-healthy-washington-roadmap-to-recovery-229b880a6859>.

27 ² <https://www.doh.wa.gov/Newsroom/Articles/ID/2570/Roadmap-to-recovery-update-All-regions-staying-in-Phase-1-for-now>

1 for future phases (2, 3, and 4) has not yet been released.³

2 As the Court ruled orally at a status hearing on January 19, 2021, given the Court's
3 grave concerns about the safety of the public and the parties and the current soaring numbers
4 of COVID cases, it is not possible to proceed with a jury trial in this matter on February 8,
5 2021. The safety and health of all involved individuals and the public is of paramount
6 concern to the Court. Even with all of the enhanced protocols and procedures that the Court
7 has put into place, an in-person jury trial would require at least sixty people in the
8 Courtroom, which would create a super-spreader environment and is untenable under the
9 current public health conditions.

10 Limiting the size and frequency of gatherings remains critical to preventing serious
11 illness and death from COVID-19. The continuing public health situation resulting from the
12 pandemic also limits the availability and ability of witnesses, counsel, and Court staff to be
13 present in the courtroom. Further, because of the recommendations that individuals at higher
14 risk of contracting this disease – including individuals with underlying health conditions,
15 individuals age 60 and older, and individuals who are pregnant – avoid large groups of
16 people, at this time, it would be difficult, if not impossible, to get a jury pool that would
17 represent a fair cross section of the community. Based on the recommendations, it would
18 also be medically inadvisable to do so.

19 The Court notes that Defendant has objected to any continuance of the trial date and
20 defense counsel have indicated they are ready to proceed to trial on February 8, 2021. As a
21 result of the above findings, however, the failure to grant a continuance of the trial date in
22 this case would likely result in a miscarriage of justice. Pursuant to 18 U.S.C.
23 § 3161(h)(7)(A), the ends of justice served by continuing the trial in this case outweigh the
24 best interest of the public and the defendant to a speedy trial.

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27 ³ [https://www.doh.wa.gov/Newsroom/Articles/ID/2573/Moving-to-the-next-phase-Vaccine-expansion-plan-meant-to-](https://www.doh.wa.gov/Newsroom/Articles/ID/2573/Moving-to-the-next-phase-Vaccine-expansion-plan-meant-to-accelerate-the-pace-of-vaccinations-statewide)
28 [accelerate-the-pace-of-vaccinations-statewide and https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/VaccinationPhasesInfographic.pdf](https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/VaccinationPhasesInfographic.pdf)

1 IT IS HEREBY ORDERED that the trial in this matter is continued until April 5,
2 2021, with a status conference scheduled for 3:00 p.m. on March 5, 2021, to discuss the
3 feasibility of the April 5, 2021 trial date. The Government shall file all pre-trial pleadings,
4 including its trial brief, proposed jury instructions, and proposed voir dire, by March 15,
5 2021. Mr. Critchell shall file all pre-trial pleadings, including a trial brief, proposed jury
6 instructions, and proposed voir dire, by March 22, 2021. The Court will not consider
7 previous pre-trial filings and requests that the parties resubmit any prior filings, even if they
8 are unchanged.

9 IT IS HEREBY FURTHER ORDERED that the time between the date of this Order
10 and the new trial date of April 5, 2021, is excluded in computing the time within which trial
11 must commence because the ends of justice served by granting this continuance outweigh the
12 best interest of the public and the defendant in a speedy trial, 18 U.S.C. § 3161(h)(7)(A).
13 Because it is impossible to conduct an in-person jury trial on February 8, 2021 without
14 exposing trial participants, their families, and anybody else they may come into contact with
15 during or after the trial to an unacceptable level of risk to their health and safety, not
16 continuing the trial date would result in a miscarriage of justice. *Id.* § 3161(h)(7)(B)(i).

17 DATED this 20th day of January, 2021.

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20 The Honorable Richard A. Jones
21 United States District Judge
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